Canada Industrial Relations Board Conseil canadien des relations industrielles

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Reasons for decision

Pam Scholl,

applicant,

and

Teamsters Local Union No. 879,

bargaining agent,

and

FirstCanada ULC, carrying on business as First Student Canada,

interested party.

Board File: 29157-C
Neutral Citation: 2012 CIRB **630**
March 1, 2012

The Canada Industrial Relations Board (the Board), composed of Ms. Elizabeth MacPherson, Chairperson, and Messrs. John Bowman and David Olsen, Members, considered the above-noted application.

These reasons for decision were written by Mr. John Bowman, Member.

Parties' Representatives of Record

Ms. Pam Scholl, representing herself;
Ms. Joanne L. McMahon, for Teamsters Local Union No. 879;
Ms. Pat Ruber and Ms. Penny Kranz, for FirstCanada ULC, carrying on business as First Student Canada.

I–Nature of the Application

[1] On December 6, 2011, Ms. Pam Scholl (the applicant) made an application to the Board under section 70(2) of the *Canada Labour Code* (*Part I–Industrial Relations*) (the *Code*) to be exempted from membership in a trade union and payment of union dues on the basis of her religious beliefs. The applicant is a bus driver employed by FirstCanada ULC, carrying on business as First Student Canada (the employer) in St. Anns, Ontario and is a member of a bargaining unit certified with Teamsters Local Union No. 879 (the union or Local 879).

II–Background to the Application

[2] The union was certified to represent a unit of bus drivers and helpers at the employer's St. Anns, Ontario operation on March 18, 2010. The union negotiated a first contract with the employer, but it was rejected by a vote of the employees in March of 2011. On April 6, 2011, the applicant in this matter filed an application with the Board, on behalf of a majority of the members of the bargaining unit, seeking revocation of the union's certification. In *Scholl et al.*, 2011 CIRB LD 2576, the Board dismissed the application on the grounds that the union was continuing to make a reasonable effort to enter into a collective agreement, consistent with section 39(2) of the *Code*.

[3] The union subsequently signed a first collective agreement with the employer, although it was unable to obtain ratification of the agreement from members of its bargaining unit. In her December 2011 application to the Board, the applicant requested that she be exempted from paying union dues and being a member of the union on religious grounds. Her application included many references to her dissatisfaction with the way this particular union functioned in the workplace. The applicant accused the union of misrepresentation; acting with a lack of professionalism; tricking people into

signing up into the union based on promises they knew they could not deliver; and acting dishonestly, among other things. The applicant indicates that she attended union meetings and therefore witnessed the union's "questionable practices." Her application indicates that she does not wish to be part of "this union" (Local 879), because it "continues to be dishonest, provoking and gives very little information (secretive)."

[4] In its reply to the application, the union submits that the applicant is not objecting to unions in general on spiritual grounds, as required by the *Code*, but is objecting to a particular union, Local 879. The union further submitted that the applicant was rationalizing her objections to the union on religious grounds, and that the applicant's religious beliefs were not the basis for this application, which is required for such an application to succeed. The employer did not make any submissions on the merits of the application, but noted that it did not assist Ms. Scholl in making her application to the Board.

III–Analysis and Decision

[5] Section 16.1 of the *Code* provides that the Board may decide any matter before it without holding an oral hearing. None of the parties requested that a hearing be held on this application. After reviewing the submissions from the parties, the Board is satisfied that the documentation before it is sufficient for it to decide the matter without holding a hearing.

[6] This application was filed pursuant to section 70(2) of the *Code*, which reads:

> 70.(2)Where the Board is satisfied that an employee, because of their religious conviction or beliefs, objects to joining a trade union or to paying regular union dues to a trade union, the Board may order that the provision in a collective agreement requiring, as a condition of employment, membership in a trade union or requiring the payment of regular union dues to a trade union does not apply to that employee so long as an amount equal to the amount of the regular union dues is paid by the employee, either directly or by way of deduction from their wages, to a registered charity mutually agreed on by the employee and the trade union.

[7] In *Richard Barker* (1986), 66 di 91; 13 CLRBR (NS) 28; and 86 CLLC 16,031 (CLRB no. 576), the predecessor to this Board, the Canada Labour Relations Board (CLRB), set out certain criteria that had to be met before it would grant an application for a religious exemption from union membership or payment of union dues. The criteria are:

(1) The applicant must object to all trade unions, not just to a particular trade union;

(2) The applicant does not have to rely on some specific tenets of a religious sect to base his or her objection;

(3) An objective inquiry must be made into the nature of the applicant's beliefs in the sense that they must relate to the Divine or man's perceived relationship with the Divine, as opposed to man-made institutions;

(4) The applicant must convince the Board that he or she is sincere and has not rationalized the objections to the union on religious grounds after being made aware of the provisions of the *Code*.

[8] In *Tim Gordon* (1988), 74 di 84; and 3 CLRBR (2d) 245 (CLRB no. 695), the CLRB dealt with a case that bears some similarities to the one now before the Board. In that case, the application was dismissed on the basis that the applicant did not object to membership in a trade union generally, but was specifically opposed to certain policies and practices of his particular union. The CLRB stated:

> The Board is not convinced that in this case Mr. Gordon's objections to being a part of CUPW are strictly of a religious nature. Certainly he has derived his inspiration from the Bible in forming his opinions on his union's policies, but his objection goes beyond this area. The applicant is not pleased with CUPW's actions in the workplace. Inasmuch as he tried to convince us that he probably could live with the situation if the policies were changed, we are of the opinion that Mr. Gordon simply wants the world to be a certain way - to conform to his way of thinking. The concept of trade unionism causes him no hardship. ...
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> (pages 90–91; and 251–252)

[9] In the case before the Board, the application clearly stems from the applicant's dissatisfaction with the way her particular union has conducted itself at her workplace. The applicant criticizes the union regarding its organizing tactics, its method of negotiating a first collective agreement, and its conduct at union meetings. This suggests to the Board that the application is based on the applicant's

dissatisfaction with a particular union, rather than any fundamental religious objection to unions in general. The application therefore does not meet the first criterion set out in *Richard Barker, supra*.

[10] The Board's conclusion that the applicant is not fundamentally opposed to trade unionism in general is also borne out by the fact that she attended union meetings and participated in union activities regarding the negotiation of the first collective agreement at her workplace. Such participation in union affairs is not consistent with the suggestion that involvement in unions is contrary to the applicant's religious beliefs. This application appears to be simply another chapter in the applicant's ongoing battle against the union. Section 70(2) of the *Code* is clearly not intended to be used in this manner.

[11] For the reasons cited above, the application under section 70(2) of the *Code* is dismissed.

[12] This is a unanimous decision of the Board.

Elizabeth MacPherson
Chairperson

John Bowman
Member

David Olsen
Member